

The complaint

Mr M has complained that Barclays Bank UK PLC claims he has a mortgage with it as he doesn't recall signing any contract with it, nor does he recall it providing any consideration such as lending him money. He says that in the event Barclays did believe he had outstanding obligations or that he owed it money then he hand delivered a promissory note in full compliance with the Bills of Exchange Act 1882 which it accepted and signed for. Mr M says that confirmed full and final settlement of any alleged obligations owed to Barclays, and Barclays has been unable to return the original promissory note to him.

To resolve the complaint Mr M wants the Financial Ombudsman Service to confirm that Barclays has no further legitimate claim against him and requires all claims and charges to be extinguished immediately.

What happened

Barclays Bank PLC trading as The Woolwich issued a mortgage offer dated 17 August 2007. The loan amount was £170,193 and it said the mortgage was to be held on an interest only basis over a term of 20 years and 11 months. The interest rate was noted to be:

- For £120,193 of the mortgage - a tracker which would be 0.19% above Barclays' base rate until 16 May 2028.
- For £50,000 of the mortgage - a tracker which would be 0.59% above Barclays' base rate for the whole of the term.

The mortgage offer indicated it was to refinance an existing Woolwich mortgage that Mr M already held. I understand the application was to borrow the additional £50,000 that showed in the mortgage offer as being on a different interest rate product. The mortgage offer explained "The Woolwich" and "Woolwich" were trading names of Barclays Bank PLC.

In 2016 Barclays dropped the Woolwich trading name and rebranded all its mortgages to Barclays.

Up until September 2020 Mr M made the monthly payments due to the mortgage. In October 2020 the direct debit was returned as unpaid, and no monthly payments have been made since then.

In December 2020 Barclays sent a redemption statement to Mr M at his request.

On 29 January 2021 Mr M hand delivered a letter to Barclays. The letter enclosed a document titled "Promissory Note" and said it was "Tender in terms of the Bills of Exchange Act 1882 AND Settlement in terms of High Court Rules 18(4)(a)". It said Mr M would pay Barclays Bank UK PLC £170,683.82 by monthly instalments of £100 on the 7th of each month, and payment could be obtained by collecting the money from the property address.

Whilst Barclays received the letter and enclosed document it seems it was filed in error without a response being sent.

In 2023 Barclays started legal proceedings to take possession of the property and in November 2023 a court granted a possession order with a 28 day stay.

Soon after the possession order was granted Mr M wrote to Barclays. There was then contact between the parties both over the phone and in writing and a complaint was raised.

Barclays responded to Mr M's complaint on 13 June 2024. It summarised the complaint as:

"In your complaint, you mentioned you've not received an income and expenditure form. Also, you stated your promissory note has not been returned, and you've not received responses to your letters dated 10 and 15 January. You've requested the return of the promissory note, and you believe if the note is not returned, the account should be considered settled."

Barclays said the promissory note doesn't invalidate the terms and conditions of the mortgage, nor does it supersede them. It apologised for its inability to obtain the hard copy of the promissory note, and for the poor customer service Mr M experienced due to the lack of response to his letters. It offered £300 compensation by way of an apology for any distress and inconvenience caused to Mr M by its inability to obtain the hard copy of the promissory note. It also said that Mr M should contact it to discuss an income and expenditure assessment.

Mr M referred the complaint to us in November 2024.

Our Investigator looked at the complaint. She said a complaint about whether Mr M had a mortgage contract with it hadn't been raised as part of the initial complaint with Barclays and so we couldn't consider that. In respect of the rest of the complaint she said Barclays should have responded to Mr M and the service had been poor, but she was satisfied that Barclays was entitled to request repayment of the mortgage in line with the mortgage terms. She didn't think if Barclays had sent an income and expenditure form to Mr M that it would have made any difference to the overall position. Overall she felt Barclays' offer to pay £300 compensation was fair.

In the meantime Mr M had sent us a letter which had crossed in the post. In that he said he trusted case law within the commonwealth will be referred to where promissory notes discharged debts, and reference to literature on promissory notes could be provided by legally qualified personnel. He also said he trusted that reference will be made to the Memorandum and Articles of Association and all banking policies and procedures of Barclays or related parties which confirmed that they do or otherwise must accept promissory notes.

There was some further back and forth between Mr M and our Investigator which I won't set out the detail of here, but I can confirm that I've read and considered in full.

Our Investigator told Mr M that her opinion remained the same and she felt £300 compensation was fair.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable in all the circumstances of this case, I'm required by DISP 3.6.4R of the FCA Handbook to take into account the relevant law, regulations, and good industry practice, when reaching my decision.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome. Having done all that, I don't think this complaint should be upheld beyond the offer already made by Barclays. I realise this will be disappointing for Mr M But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

I understand Mr M wants me to comment on the case law he has referred to but I won't be doing so as, not least, some of the cases Mr M refers to aren't from the UK, nor is the Bills of Exchange Act 1909 that was referred to in an article Mr M kindly provided to our service. The UK version of that Act is the Bills of Exchange Act 1882 that Mr M has referred to elsewhere.

Mr M has clearly done a lot of research into what he feels are relevant laws and legislation to support his complaint. Based on this he feels very strongly that Barclays should treat the promissory note as a valid payment. I've had regard for all he's said and sent us, alongside taking into account what the relevant law says too (in particular the Bills of Exchange Act 1882). Having done so, I can't see any reason that it would be fair or reasonable to tell Barclays that it should accept the promissory note here.

A promissory note like the one here isn't legal tender and nor is it strictly 'money' at all. It's a promise to pay a sum at some future date (or dates). But it doesn't mean that Barclays had to accept this promise and arrangement over any other such binding arrangement it may already have with Mr M in respect of his mortgage. Here, I don't accept that, by not returning the note, Barclays should be viewed as having accepted it. If Mr M wants to make a payment towards the debt here, he remains free to do so using a method that Barclays will accept.

I realise that Mr M feels that in light of this, Barclays shouldn't be pursuing the debt and that it is unenforceable. Mr M's legal arguments around the relevant law and legislation here are better suited for a court to deal with – this service doesn't have the same powers. Instead, we're a quick and informal service that looks at what's fair and reasonable in the individual circumstances of a case.

Having done so here, Barclays has acted fairly in declining to accept the promissory note. I also think that, where Barclays's records show that Mr M had an account with it for a number of years and that he owes it money – it's entitled to ask him to repay this. If Mr M feels that the debt is unenforceable for any reason – he can take that dispute further outside of this service, perhaps through the courts.

Mr M also wants to rely on a statement of Lord Denning in the case of *Fielding & Platt Ltd v Najjar* [1969] 2 All ER 150 at 152 (UK CA):

"We have repeatedly said in this court that a Bill of Exchange or a Promissory Note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary."

So it is correct that Lord Denning said that a promissory note is as good as cash. But he then went on to say (and I paraphrase) that if a creditor agrees to accept a promissory note (and there is no obligation to do so), then the debtor (that is, the person who has given the note to the creditor) is required to pay the full amount stated on the promissory note when they are called on to do so by the creditor. That means that the person who provides the promissory note (in other words, the debtor) must follow through and pay the amount promised in the note. It doesn't mean that the note itself is the payment. And it doesn't mean that the person or organisation receiving the note is obliged to accept it. In this case, Barclays hasn't agreed to accept a promissory note and it doesn't have to.

I can understand that, having come across (probably online) the mistaken and erroneous theory that one can use self-created promissory notes to pay debts, Mr M might have thought this was a way to pay off the mortgage. But it is not. It also isn't a way to substitute the contract he entered into with what was Barclays Bank PLC trading as The Woolwich (and is now known as Barclays Bank UK PLC) with a new contract that he had written in that promissory note document.

If Mr M feels his mortgage contract is in anyway unenforceable (whether that be because he believes he doesn't have a signed contract with Barclays, or because he believes the debt has been extinguished or repaid) then I can only suggest he raises that with the courts as a court has already been satisfied that Mr M holds this mortgage with Barclays as it granted an order for possession on that basis.

Unless Mr M works with Barclays to repay the arrears and get the mortgage back on track, then Barclays is entitled to ask the court to grant possession and sell the property itself to recover the debt. As Barclays already holds a possession order I would urge Mr M to contact Barclays without delay to set out his proposals to do so.

All that said, Barclays has accepted it didn't respond to Mr M's correspondence when it should have and it has offered £300 compensation for that oversight. Having considered everything very carefully I'm satisfied that offer is fair and reasonable as whilst it should have responded to both the original promissory note and then Mr M's later correspondence about it, I don't think the situation would be any different even if it had done so. At the time Mr M gave his letter containing the promissory note to Barclays at the end of January 2021 he'd already missed a few months' mortgage payments, and he didn't restart his payments even after he was told in 2024 that Barclays didn't accept the promissory note.

Having considered everything very carefully I don't uphold the main thrust of this complaint, and I'm satisfied Barclays' offer of £300 compensation for its lack of response is fair and reasonable.

My final decision

Barclays Bank UK PLC has already made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Barclays Bank UK PLC should pay £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 September 2025.

Julia Meadows
Ombudsman